99TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
99-784

TEMPORARY PROHIBITION OF STRIKES OR LOCKOUTS WITH RESPECT TO THE MAINE CENTRAL RAILROAD CO.

AUGUST 12, 1986.—Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

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REPORT

together with

ADDITIONAL VIEWS

[To accompany H.J. Res. 683]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce to whom was referred the joint resolution (H.J. Res. 683) to provide for a temporary prohibition of strikes or lockouts with respect to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute, having considered the same, report favorably thereon with amendments and recommend that the joint resolution as amended do pass.

The amendments are as follows:

Page 3, line 3, strike out "Not later than 15" and insert in lieu thereof "(a) Not later than 10".

Page 3, line 5, strike out "Secretary of Labor" and insert in lieu thereof "board established under subsection (b)".

Page 3, line 10, strike out "; and" and insert in lieu thereof "represented by the Brotherhood of Maintenance of Way Employees;".

Page 3, strike out lines 11 and 12, and insert in lieu thereof the following:

> (2) findings of fact regarding financial and other circumstances related to the dispute described in this resolution, including, but not limited to, developments since March 3, 1986; and

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(3) recommendations for a proposed solution of the dispute described in this resolution, including, but not limited to, the issues covered by Presidential Emergency Board Number 209.

Page 3, at the end of the resolution, add the following new subsections:

(b) The National Mediation Board shall appoint a three-member board for the purpose of preparing and submitting the report described in subsection (a). No member appointed to such board shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of such members shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act shall apply to the expenses of the board established under this subsection as if such board were a board created under such section 10.

(c) The board appointed under subsection (b) shall terminate upon the submission to the Congress of the report required under subsection (a).

PURPOSE AND SUMMARY

The purpose of H.J. Res. 683 is to extend for 60 days, through September 18, 1986, the cooling-off period in the labor-management dispute between the Maine Central Railroad Company/Portland Terminal Company and the Brotherhood of Maintenance of Way Employees.

The legislation would extend the cooling-off period for 60 days from July 21, 1986 and would provide for a report to Congress by a three-member board appointed by the National Mediation Board not later than 10 days before the expiration of the extended cooling-off period with respect to the progress in negotiations, findings of facts, and recommendations for a proposed solution.

BACKGROUND AND NEED FOR THE LEGISLATION

There is currently a labor dispute between the Brotherhood of Maintenance of Way Employees (BMWE) and the Maine Central Railroad Company/Portland Terminal Company, one of Guilford Transportation Industries' railroads. (The others are the Delaware & Hudson Railway Company and the Boston & Maine Corporation.)

A. Background on Railway Labor Act

The Railway Labor Act governs labor relations in the railroad industry. One of the principles of the Act is to encourage the parties to come to agreement on issues in dispute and to avoid strikes and lockouts. The Act does this by requiring the parties to engage in lengthy mediation. If efforts at mediation fail, if binding arbitration is rejected and if the dispute threatens substantially to interrupt interstate commerce, the President, at the recommendation of the National Mediation Board, can appoint an emergency board to study the dispute. The emergency board has 30 days to study the dispute, during which time the parties must maintain the status quo (the "cooling off" period). Furthermore, the parties must main-

tain the status quo for 30 days after the board issues its report. Once that period expires, however, the parties are free to engage in self-help *i.e.*, engage in a strike or lockout.

B. Background on the Current Dispute

The BMWE served notice under section 6 of the Railway Labor Act in April 1984, seeking changes in provisions of its collective bargaining agreement with Maine Central. The BMWE was concerned with the gradual layof of track maintenance workers. Over the last several years, the number of these workers had dropped from about 400 to about 100. The union sought labor protection benefits, including benefits for those employees previously laid off. The railroad argued that it needed to increase productivity and that, as a result of declining traffic and increasing truck competition, it could not afford costly labor protection. The Maine Central's position was that, in a competitive and deregulated environment, it is unable to pass on its costs, including labor costs, to shippers.

The carrier's final offer include a $20,000 lump sum separation allowance for current employees who lose their jobs, along with changes in seniority assignments to provide greater flexibility to move maintenace of way employees throughout the Maine Central. Labor wanted a $26,000 severance payment, along with certain payments for employees currently furloughed.

There was no agreement and on March 3, a strike began, which spread throughout the Guilford system. Guilford kept operating but it lost traffic and revenue from the strike.

Throughout the strike, organized labor urged the President to appoint an emergency board under the Railway Labor Act, which would set in motion the 60-day cooling-off period. Under the Railway Labor Act, the National Mediation Board (the equivalent to the National Labor Relations Board for the railroad and airline industries) can recommend the appointment of an emergency board if a strike threatens substantially to interrupt interstate commerce such as to deprive any section of the country of essential transportation service. The decision to appoint an emergency board is within the President's discretion. The Mediation Board recommended the appointment of an emergency board. The President did not immediately establish one, on the basis that, in the Administration's view, the Guilford strike at the time did not substantially interrupt commerce to deprive the region of essential rail services.

Prior to this time, labor began picketing other railroads. Initially, other railroads sought and received injunctions in federal district courts against this "secondary picketing." However, as the legal issues were reviewed by several circuit courts of appeal, the courts determined that the Railway Labor Act, unlike the National Labor Relations Act, did not forbid secondary picketing. As a result, injunctions were lifted. In mid-May, the BMWE picketed Conrail, shutting it down for several hours. As a result, on May 16, 1986, the President established an emergency board.

This put in place the 60-day cooling off period during which employees returned to work. On June 20, 1986, the emergency board recommended that the railroad's final offer be accepted, but with the severance allowance to be $26,000 instead of $20,000. Labor said

it would accept the emergency board's recommendations. Guilford said that while it could have accepted these recommendations before the strike, it could no longer accept them because of the revenue and traffic loss resulting from the strike.

Meanwhile, there was some dispute about Guilford's compliance with the "back to work" order. Guilford brought its employees back, then furloughed many of them on the ground that it had lost traffic during the strike. On July 11, 1986, a federal district court in Maine ordered Guilford to rehire all employees, and to lay employees off only when court approval. According to the court, Guilford was required, under section 2 of the Railway Labor Act, to exert every reasonable effort to maintain agreements and could not abolish jobs in an arbitrary or discriminatory way. Guilford has since received court permission to lay off employees, apparently on the basis of changed economic circumstances.

C. Current Situation

The cooling-off period expired at 12:01 A.M. Monday morning, July 21. Labor has indicated it will not strike, at least for now. However, on Wednesday, August 6, Guilford unilaterally imposed new work rules, which it argues it is free to do under the Railway Labor Act. However, this freedom may be limited by a 1964 court decision (*Florida E.C. Ry. Co.* v. *Brotherhood of Railroad Trainmen*, 336 F.2d 172 (5th Cir. 1964)). The union has challenged this imposition of new work rules in federal court. This change in the status quo could provide a strike, which could affect railroads other than those in the Guilford system.

D. House Joint Resolution 683

On July 24, 1986, House Joint Resolution 683 was introduced. As reported, this legislation would extend the cooling-off period for an additional sixty days, until September 18, 1986. In addition, ten days before the expiration of the cooling-off period, in early September, a three-member board appointed by the National Mediation Board would be required to submit to Congress a report on the progress of negotiations, findings of facts regarding financial and other circumstances related to the dispute, and recommendations for a proposed solution of the dispute.

The Commitee believes H.J. Res. 683 should be passed. This will provide additional time for both parties to attempt to negotiate an agreement to the current dispute and thus avoid the disruption to rail service, both regional and national, that could accompany the exercise of self-help.

HEARINGS

The Subcommittee on Commerce, Transportation and Tourism held a hearing on H.J. Res. 683 on Thursday, July 31, 1986. Oral testimony was received from the Honorable George T. Mitchell, U.S. Senate, the Honorable Olympia J. Snowe, the Honorable John M. McKernan, Jr., and the Honorable Silvio O. Conte, U.S. House of Representatives, and representatives of Guilford Transportation Industries and the Brotherhood of Maintenance of Way Employees.

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A written statement was received from the Honorable John Riley, Federal Railroad Administrator.

COMMITTEE CONSIDERATION

On July 31, 1986, the Subcommittee on Commerce, Transportation and Tourism met in open mark-up session and, by voice vote, with a quorum present, reported H.J. Res. 683, with an amendment.

On August 7, 1986, the full Committee on Energy and Commerce met in open mark-up session and, by voice vote, with a quorum present, ordered reported H.J. Res. 683, with an amendment.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has not made oversight findings and recommendations in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee this Congress by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

The Committee estimates this legislation would have minimal expense to the Federal Government, attributable to the report required to be performed by the board appointed by the National Mediation Board in section two.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 11, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As your staff requested, the Congressional Budget Office has prepared a cost estimate for H.J. Res. 683, as amended by the Subcommittee on Commerce, Transportation, and Tourism. CBO estimates that this bill would result in no significant cost to the Federal government. The budgets of state and local governments would not be affected by enactment of this legislation.

H.J. Res. 683 would provide for a sixty day prohibition of strikes and lockouts with respect to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute. The sixty day period shall apply beginning July 21, 1986. In addition, the bill would create a three member board to study the progress of negotiations between the common rail carriers, report financial findings related to the dispute, and to make recommendations for a proposed solution to the dispute.

Costs to the Federal government would result from the expenses of this board. The board would be required to submit its report to the Congress ten days prior to the expiration of this prohibition, and at this time would be disbanded. We estimate total salaries and expenses to be less than $50,000 over the board's expected fifty day duration.

Please call me or have your staff contact Michael Pogue (226–2820) if you have further questions.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

By ensuring the continuation of rail service during the cooling-off period, the legislation could have an anti-inflationary effect.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 of the legislation extends the cooling-off or status quo provisions of the last paragraph of section 10 of the Railway Labor Act for an additional 60 days from July 21, 1986 (through September 18, 1986), with respect to the dispute between the Maine Central Railroad Company/Portland Terminal Company and the Brotherhood of Maintenance of Way Employees. The new cooling-off period is retroactive to July 21, 1986, to ensure the continuation of the status quo that existed prior to the time the earlier cooling-off period expired at 12:01 a.m. on July 21, 1986.

Section 2

Section 2 of the legislation requires a three-member board appointed by the National Mediation Board to submit a report to Congress not later than 10 days prior to the expiration of the new cooling-off period established in section 1.

The report is to discuss the progress, if any, in negotiations between the Maine Central Railroad Company/Portland Terminal Company and its employees represented by the Brotherhood of Maintenance of Way Employees, findings of fact regarding financial and other circumstances related to the dispute, including, but not limited to, developments since March 3, 1986 (when the strike began), and recommendations for a proposed solution to the dispute, including, but not limited to, the issues covered by the emergency board.

No member appointed to the board may be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the board members shall be fixed by the National Mediation Board. The board is authorized to pay its expenses as if it were an emergency board, pursuant to the provisions of the second paragraph of section 10 of the Railway Labor Act.

The board shall terminate upon submission of its report to Congress.

The Committee is aware that the parties to the dispute may submit records to the board, including records which may contain confidential business information. The Committee intends that any such confidential business information shall be protected from disclosure pursuant to applicable law.

AGENCY VIEWS

STATEMENT OF JOHN H. RILEY, FEDERAL RAILROAD ADMINISTRATOR

Mr. Chairman, this hearing was called to inquire into a labor dispute between the Maine Central Railroad (and its subsidiary, the Portland Terminal Company) and the Brotherhood of Maintenance of Way Employees (BMWE). Resolution of that dispute is important to employees, the carrier and shippers served by Maine Central. However, the fact that a dispute involving approximately 100 active employees of the Maine Central is now before this Subcommittee, after precipitating a national rail strike, is itself evidence that something has gone seriously wrong with the dispute resolution mechanisms under the Railway Labor Act of 1926.

In suggesting that something is amiss, I do not refer to the underlying dispute or its handling by labor, management, or those who have so diligently provided mediation and conciliation services. The problem is more fundamental: the rules of collective bargaining and dispute resolution have been redefined in midstream, without the involvement of the Congress. In litigation growing out of this dispute, for the first time in 60 years, four courts of appeals have read federal statutory law to deprive federal trial courts of authority to enjoin secondary picketing in the railroad industry.

This literally allows a strike on a small regional railroad involving a relative handful of employees to shut down the Nation's rail system. That our concern is not academic was demonstrated when, in May of this year, Maine Central employees set up their picket lines on Conrail and other neutral carriers, necessitating the establishment of a Presidential Emergency Board. This development upsets the regular procedures of the Railway Labor Act, threatens the vitality of local and regional railroads, ensures that innocent parties will suffer, and affords rail labor rights that other organized employees in this Nation do not enjoy.

Railway Labor Act of 1926.—You will note that the President and the Congress have been drawn into this local dispute. That is a departure from the way in which the Railway Labor Act was intended to work. That Act was designed to promote peaceful settlement of all disputes between carriers and their employees by conference, mediation, and voluntary arbitration. Only where a dispute threatened to "deprive any section of the country of essential transportation services" was the Executive to become involved, and then the Executive's role was limited to creation of an Emergency Board. On its face, the Act did not even define a Congressional role. Over the years a few exceptions had to be made for major, intractable disputes of national scale; but the rules remained unchanged.

The ability of labor to engage in unrestricted secondary picketing under recent appellate court decisions changes the rules, and changes them in a way that will seriously disadvantage both consumers and shippers and uninvolved carriers. Unrestricted secondary picketing creates an institutional incentive to disfavor dispute resolution by the normal processes of the Act, and instead opt for resolution through the political process. This threatens to bring the President into scores of local disputes, thereby diluting further the moral force intended to accompany the recommendations of the emergency boards. So, too, the committees of Congress will find themselves sitting as supermediators to resolve the underlying disputes by legislation. This is the institutional meaning of the recent secondary picketing cases.

Smaller railroads.—The newfound availability of secondary picketing comes at a particularly inopportune time. In the aftermath of deregulation this country is benefiting from a wide diversity of railroads serving the needs of shippers and consumers, from new short lines organized by shippers to large transportation companies such as CSX. In this environment of differing demographics and regional submarkets, railroads will need to adapt operating practices and work rules to meet the varying needs of their shipping communities, as well as the practical requirements of their varied scales of operation. If, through secondary activity, a local or regional dispute can be turned into a national issue, all carriers will inevitably be driven back into national handling, where the parameters of agreement are inevitably defined by the needs of the largest carriers. Small carriers—and their shippers—will inevitably suffer as flexibility for regional negotiation diminishes.

Unfair impacts.—Although I fully understand why a labor organization must employ all of the lawful tools at its disposal, secondary picketing is, nevertheless, fundamentally unfair. The policies that caused the Congress to enact the Taft-Hartley Act in 1947 and that may have prompted the courts in earlier cases to enjoin unrestricted secondary activity remain sound today. Secondary picketing against neutrals inflicts serious and indiscriminate harm on uninvolved carriers, shippers and consumers. The innocent party, non-affiliated, non-aligned, is always the loser.

Other industries.—If we can reasonably conclude that secondary picketing upsets the processes of the Railway Labor Act, unfairly affects innocent bystanders, and threatens the healthy diversity of contemporary railroading, there is little one can say in its favor. Section 8(b)(4) of the National Labor Relations Act makes secondary activity directed against neutral employers an unfair labor practice. Rail labor deserves to play on a level playing field, enjoying the basic right to self-help emjoyed in other industries. That also implies, however, that employees in the single industry most critical to the free flow of interstate commerce should have no greater rights to disrupt the national economy than other workers.

A new dimension has been added to labor-management relations in the railroad industry, and the secondary boycott issue merits attention in its own right, above and beyond the particulars of this or any other labor-management dispute.

Let me now add two specific comments on the legislative proposal before the Committee this morning.

First, the Administration believes it is inappropriate to mandate the involvement of any Cabinet Officer as a fact-finder or arbitrator in a private labor-management dispute. As a consequence, the Administration opposes the statutory mandate to the Secretary of Labor set forth in Section 2 of the Joint Resolution.

Second, while the Department of Transportation would not oppose the imposition of a short statutory "cooling-off" period should the Committee choose to pursue that option, the cooling-off period should not extend more than a few days beyond the date on which Congress reconvenes in September. This would ensure that Congress will have adequate time to weigh the options for any further legislation that might prove necessary before adjournment.

ADDITIONAL VIEWS ON HOUSE JOINT RESOLUTION 683, PROVIDING FOR A SIXTY-DAY STATUS QUO PERIOD AND STUDY OF THE LABOR DISPUTE ON THE GUILFORD SYSTEM

The joint resolution reported by the Committee reflects Congressional concern with the continuing dispute on the Guilford rail system. This dispute remains unresolved after roughly two years of negotiation and exhaustion of the dispute resolution procedures of the Railway Labor Act. Mediation has failed and binding arbitration was rejected. Thereafter, the carrier declined to accept the recommendations of the Presidential Emergency Board report issued in June.

The Northeast region witnessed a strike on the Guilford system that lasted almost three months. The carrier lost up to 50% of its revenues at the height of the strike and volumes declined sharply. Significantly, labor extended its picketing to other rail carriers, affecting service on railroads that were not parties to the dispute. Litigation ensued and four appellate courts upheld the ability of labor to engage in secondary picketing.

We reluctantly support an extension of the cooling off period for an additional sixty days. We recognize that maintaining the status quo will avoid any disruptive action and may help to create an atmosphere in which the parties may be encouraged to reach an agreement. However, as a matter of policy, it is inappropriate for the Congress to intervene in a private labor dispute. The parties ideally should be left to resolve their differences on their own initiative.

Moreover, Congress should be ever more reluctant to interfere once the cooling off period provided by H.J. Res. 683 expires in mid-September. Recommendations for resolving the dispute, together with findings on Guilford's financial condition, will be submitted to Congress before that time. Congressional intervention now in passing H.J. Res. 683 should not be taken as a signal that we will necessarily legislate again in September by forcing an agreement on the parties or yet again extending the status quo.

Clearly, this regional dispute is somewhat novel in that secondary picketing of other carriers was used to exert pressure on Guilford. Thus, others became involved unwillingly and rail service was affected. A dispute that had been confined to a small regional carrier grew to include other connecting rail carriers. Indeed, secondary picketing is so disruptive that it would undermine the dispute resolution procedures of the Railway Labor Act, particularly if Congress routinely is asked to intervene.

We encourage the parties to peacefully settle their differences. The extension of the cooling off period in H.J. Res. 683 will help to prevent further disruption, including self help action by the carrier. Hopefully, this resolution will engender an agreement. Howev-

er, it bears repeating that our action should not be read as an indication that the Congress will once again become involved in an issue which should be resolved independently by labor and management.

NORMAN F. LENT.
TOM BLILEY.
HOWARD C. NIELSON.
DAN SCHAEFER.
FRED J. ECKERT.
BILL DANNEMEYER.
DON RITTER.

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